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MAILED

JUN 30 2010

OFFICE OF PETITIONS

In re Application of :
Miller : DECISION ON APPLICATION
Application No. 09/732,189 : FOR
Filed: December 7, 2000 : PATENT TERM ADJUSTMENT
Docket No. IBM/151 :
Title: PEER PROTOCOL STATUS QUERY :
IN CLUSTERED COMPUTER SYSTEM :
:

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENT," filed February 3, 2010. Applicants request that the patent term adjustment indicated on the initial determination of patent term adjustment be corrected from one thousand, eight hundred and ninety-two (1892) days to one thousand, nine hundred and forty-eight (1948) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one thousand, nine hundred and forty-eight (1948)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 22, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date is 1892 days. On February 3, 2010, Applicants timely¹ filed the present application for patent term adjustment. Applicants argue that an additional 56 days of examination delay should be accorded.

¹ Office records show that the Issue Fee payment was received on February 3, 2010.

Applicants state that any patent issuing from the application is not subject to a terminal disclaimer.²

37 CFR 1.703(a)(5) states that the term of an original patent shall be adjusted by the failure of the Office to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application.

The application history has been reviewed and it has been determined that Applicants are correct in stating that an additional period of examination delay should be accorded. A final decision by the Board of Patent Appeals and Interferences was mailed on July 27, 2009, and at least one allowable claim (claims 1-21) remained in the application.³ The notice of allowance was mailed four months and 56 days after the date of a final decision by the Board of Patent Appeals and Interferences, resulting in 56 days of examination delay.

An adjustment of 56 days has been entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is one thousand, nine hundred and forty-eight (1948) days (2144 days of Office delay minus 196 days of Applicant delay).

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in

² Petition, page 2.

³ See MPEP § 2731, example C: "[i]f claims 1 and 2 are pending, and the decision affirms the rejection of claim 1 and reverses the rejection of claim 2, "allowable claims remain in the application" for purposes of 35 U.S.C. 154(b)(1)(A)(iii) (claim 2 is "allowable" within the meaning of 37 CFR 1.703(a)(5) because there is no outstanding objection or requirement as to it (see MPEP § 1214.06, paragraph (I)(B))."

the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.



Anthony Knight
Director
Office of Petitions

Enclosure: Copy of updated PAIR screen

Day : Wednesday

Date: 6/30/2010
Time: 08:22:39**PALM INTRANET****PTA Calculations for Application: 09/732189**

Application Filing Date:	12/07/2000	PTO Delay (PTO):	2088
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	196
Post-Issue Petitions:	0	Total PTA (days):	1948
PTO Delay Adjustment:	56		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
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79	01/22/2010	MAIL NOTICE OF ALLOWANCE			
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77	12/23/2009	DOCUMENT VERIFICATION			
76	12/16/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
75	12/16/2009	NOTICE OF ALLOWABILITY			
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71	07/27/2009	BPAI DECISION 41.50(B)			
70	10/07/2008	CASE DOCKETED TO EXAMINER IN GAU			
68	08/21/2008	DOCKETING NOTICE MAILED TO APPELLANT			
67	08/16/2008	ASSIGNMENT OF APPEAL NUMBER			
66	07/14/2008	APPEAL AWAITING BPAI DOCKETING			
65	05/14/2008	APPEAL READY FOR BPAI REVIEW			
64	12/29/2007	APPEAL READY FOR BPAI DOCKETING			
63	12/07/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
62	12/05/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
61	06/09/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
60	11/01/2007	RETURN OF UNDOCKETED APPEAL TO THE TC			
59	11/01/2007	EXAM. ANS. REVIEW COMPLETE			
58	10/05/2007	MAIL EXAMINER'S ANSWER			

57	09/29/2007	EXAMINER'S ANSWER TO APPEAL BRIEF			
55	07/21/2007	APPEAL BRIEF REVIEW COMPLETE			
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53	06/18/2007	APPEAL BRIEF FILED			
52	05/18/2007	NOTICE -- DEFECTIVE APPEAL BRIEF			
51	04/03/2007	APPEAL BRIEF REVIEW COMPLETE			
50	04/03/2007	DATE FORWARDED TO EXAMINER			
49.1	02/02/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
49	02/02/2007	APPEAL BRIEF FILED			
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45.7	06/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		114	46
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44	01/13/2006	MAIL ADVISORY ACTION (PTOL - 303)			
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41	12/23/2005	DATE FORWARDED TO EXAMINER			
40	12/15/2005	AMENDMENT AFTER FINAL REJECTION			
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29	12/22/2004	APPEAL BRIEF FILED			
28	10/25/2004	REFERENCE CAPTURE ON IDS			
26	12/07/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
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24	07/23/2004	MAIL FINAL REJECTION (PTOL - 326)			
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14	03/15/2004	MAIL NON-FINAL REJECTION	767		-1
13	03/08/2004	NON-FINAL REJECTION			
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7	12/31/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
6.7	06/04/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
6	06/04/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
5	02/13/2001	CASE DOCKETED TO EXAMINER IN GAU		
4	02/02/2001	APPLICATION DISPATCHED FROM OIPE		
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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